

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2409 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

NATVARLAL C. JANI

Versus

STATE OF GUJARAT & 1

Appearance:

Shri P.B. MAJMUDAR, Advocate, for the Petitioner.

Shri D.N.PATEL, Assistant Government Pleader, for the
Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/02/96

ORAL JUDGEMENT

The petitioner has moved this petition for a direction
to the Competent Authority at Baroda (respondent No.2 herein)

to allow the petitioner and other co-owners to occupy the land admeasuring 4470 square metres in survey No.210 of village Vadsar in district Baroda in lieu of surrender of the land bearing survey No.209 and the balance area of the land bearing survey No.210 of village Vadsar.

2. The facts giving rise to this petition move in a narrow compass. The petitioner's father filed his declaration in the prescribed form under section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to the holding of his family within the urban agglomeration of Baroda. That form was duly processed by respondent No.2. After observing necessary formalities under section 8 of the Act, by his order passed some time in February 1982 under section 8 (4) of the Act, the holding of the father of the petitioner was declared to be in excess of the ceiling limit by 10820 square metres and that of each of his major sons (including that of the petitioner herein) by 835 square metres. Its copy is at Annexure-A to this petition. Pursuant thereto, the final statement was prepared and it was served to another brother of the petitioner. A copy of the forwarding letter together with the final statement is at Annexure-B to this petition. It appears that neither the order at Annexure-A to this petition nor the final statement at Annexure-B to this petition was carried in appeal before the appellate authority under section 33 of the Act. Thereafter, pursuant to the final statement at Annexure-B to this petition, the notification under section 10 (3) of the Act came to be issued on 17th March 1983. Thereafter, respondent No.2 issued one notice on 15th September 1983 under section 10 (5) of the Act calling upon the father of the petitioner and his sons to hand over possession of the excess land in respect of which the notification under section 10 (3) of the Act was issued. Its copy is at Annexure-D to this petition. Since the petitioner did not comply with the notice at Annexure-D to this petition, respondent No.2 by his communication issued on 4th March 1986 informed the father of the petitioner and his sons that possession of the excess land would be taken on 10th April 1986 at 12 noon. Its copy is at Annexure-E to this petition. That aggrieved the present petitioner. He has therefore approached this court by means of this petition under Article 226 of the Constitution of India for the reliefs as aforesaid.

3. This petition cannot be entertained for the simple reason that the notification under section 10 (3) of the Act was issued as early as on 17th March 1983 pursuant to the final statement at Annexure-B to this petition. It cannot be gainsaid that the effect of the notification under section 10 (3) of the Act would be vesting of the surplus land in the State Government free from all encumbrances. Once the surplus

lands vest in the State Government, no alteration in the final statement at Annexure-B to this petition can be permitted.

4. It may be mentioned at this stage that, by means of this petition, the petitioner wants modification in the final statement at Annexure-B to this petition by allowing retention of certain area of land from survey No.210 of village Vadasar and in lieu thereof surrender of the entire land bearing survey No.209 and the balance area of survey No.210 is suggested. That would amount to modification in the final statement at Annexure-B to this petition. That cannot be permitted after issue of the notification under section 10 (3) of the Act pursuant thereto.

5. In view of my aforesaid discussion, I am of the opinion that this petition cannot be accepted. It deserves to be rejected.

6. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

#####